

UNITED STATES OF AMERICA :
 :
 v. : 1:08CR495-1
 :
 MARCUS WAYNE COVINGTON :

NOW COMES the United States of America, by Anna Mills
Wagoner, United States Attorney for the Middle District of North
Carolina, through her assistant, Michael A. DeFranco, and submits
the following:

The United States intends to call as a witness Amanda C. Howell, a forensic chemist with the North Carolina State Bureau of Investigation. Ms. Howell examined the controlled substance, heroin, that Defendant Covington is alleged to have possessed on October 16, 2008. The United States recently learned that Ms. Howell is currently on maternity leave and is likely to require at least twenty-four hours of notice prior to testifying in court.¹

"Rule 901(a) of the Federal Rules of Evidence requires that a party introducing evidence establish the authenticity of its evidence by demonstrating that "the matter in question is what

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its proponent claims.'" United States v. Jones, 356 F.3d 529, 535 (4th Cir. 2004) quoting United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982). However, "[c]hain of custody precision is not an 'iron-clad requirement' and a 'missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be and has not been altered in any material aspect.'" United States v. Gavegnano, 305 Fed.Appx. 954, 957, 2009 WL 106370 (C.A.4 (Va))) (quoting Howard-Arias, 679 F.2d at 366). "The purpose of this threshold requirement is to establish that the item to be introduced, i.e., marijuana, is what it purports to be, i.e., marijuana seized from the 'Don Frank.' Therefore, the ultimate question is whether the authentication testimony was sufficiently complete so as to convince the court that it is improbable that the original item had been exchanged with another or otherwise tampered with." Howard-Arias, 679 F.2d at 366, citing United States v. Brewer, 630 F.2d 795 (10th Cir. 1980). Once the United States establishes that the item is what it purports to be, it is the "jury's job to evaluate any defects in the chain of custody and accept or disregard evidence." Gavegnano, 305 Fed.Appx. at

957-58, citing United States v. Clonts, 966 F.2d 1366, 1368 (10th Cir. 1992).

This the 6th day of May, 2009.

Respectfully submitted,

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 MARCUS ANTHONY COVINGTON :

I hereby certify that on May 6, 2009, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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